

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dennis Smith,

Petitioner,

14IWCC0061

vs.

NO: 09 WC 32114

U. S. Steel,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0061

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$22,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 31 2014

DLG/gal
O: 1-23-14
45



David L. Gore

Mario Basurto



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SMITH, DENNIS

Employee/Petitioner

Case# **09WC032114**

141WCC0061

U S STEEL

Employer/Respondent

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4364 LAW OFFICE OF THOMAS SCHOOLEY
203 EDISON AVE
P O BOX 1289
GRANITE CITY, IL 62040

0299 KEEFE & DEPAULI PC
GREGORY S KELTNER
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DENNIS SMITH
Employee/Petitioner

v.

U.S. STEEL
Employer/Respondent

14IWCC0061
Case # 09 WC 32114

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **LEE**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **12/21/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 6/29/09, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$; the average weekly wage was \$1,299.52.

On the date of accident, Petitioner was 45 years of age, *married* with 1 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$N/A for TTD, \$N/A for TPD, \$N/A for maintenance, and \$N/A for other benefits, for a total credit of \$.

Respondent is entitled to a credit of \$N/A under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$866.35/week for 5 6/7 weeks, commencing 6/17/09 through 7/27/09, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 6/17/09 through 7/27/09, and shall pay the remainder of the award, if any, in weekly payments.

Medical benefits

Respondent shall pay reasonable and necessary medical services of \$ See Petitioner Exhibit 6, as provided in Section 8(a) of the Act.

Respondent shall be given a credit of \$n/a for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 25.625 weeks, because the injuries sustained caused the 12.5% loss of the hand, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

14IWCC0061



Signature of Arbitrator

2/17/13

Date

ICArbDec p. 2

FEB 20 2013

MEMORANDUM OF DECISION OF ARBITRATOR

The issues in dispute in this case are Causation, Temporary Total Disability, Medical Bill, Nature and Extent, Accident, Accident Date and Notice. The Petitioner filed an Application for Adjustment of benefits on August 3, 2009 alleging a date of accident of June 29, 2009 as a result of repetitive trauma.

The Petitioner testified that he had been employed by U.S. Steel for approximately 17 years. In 2000 he began working as a hot strip bander and the Petitioner alleges that his duties therefore caused him to be diagnosed with right hand carpal tunnel. Petitioner's Exhibit Number 7 is a hand written note with a diagram that details the Petitioner's work duties as a hot strip bander. The Petitioner testified that his duties require a forceful grip on the gun and that a typical shift where he works one hour on and one hour off he could band as many as 135 coils. The Petitioner testified that at least once a week he would double over on his shift and during that 16 hour period he would band approximately 270 coils. Respondent's witness Robert Peek testified that he felt this number to be a little high and that in all likelihood it was more like 150 - 200 coils would be run per shift. In either event the Arbitrator finds that the video tape as submitted by the Respondent illustrates that the coils moving on the conveyor are moving at a slower rate than it would be required to band the number of coils per the Petitioner or Robert Peek's testimony. Both the Petitioner and Robert Peek indicated that the video tape does correctly and accurately detail the Petitioner's job duties as a hot strip bander, although the Petitioner indicated his right hand was constantly moving. The Petitioner further testified however that the video depicts clean tails or ends of the coil and in many instances the Petitioner would have to personally re-wrap the coil because it would start to unwind and the Petitioner did consider his work fast paced.

The Petitioner first testified that he began having symptoms while banding coils 1-2 years after he began this process. He felt like his hands would just be sore at the end of the day, however he did not recognize or put together that his work activities were causing the soreness in his hands or wrists. Prior to his hot strip banding job the Petitioner did not have any symptoms of his right hand or wrist.

The Petitioner testified that his hand would be cramping and going numb and that his arm was always sore.

The Petitioner in 2007 was assigned a job in the storeroom and worked this until there was an overall plant layoff on November 20, 2008. The Petitioner testified that during his time in the storeroom his right hand was constantly numb and hurting and he was not getting any relief. His duties in the storeroom were to use a delivery truck making deliveries throughout the plant including valves, furniture, water cases, cables, and bearings. The Petitioner testified that the truck would be loaded with pallets by the previous shift and when working his shift he would immediately begin delivering material throughout the plant. Material would be distributed by hand and the Petitioner classified this work as heavy. The Petitioner testified that he and a co-

worker would together lift the heaviest objects off the truck.

Once the trucks were off loaded the remainder of Petitioner's shift consisted of filling orders which would require him to pull items off the shelf and place them where they would go.

The Petitioner testified that during his time in the storeroom his right hand never stopped hurting and continued to go numb. His right elbow would also experience stiffening pain when he would raise or lower his arm.

The Petitioner testified that on November 20, 2008 there was a general plant shutdown which lasted until he returned to work on July 29, 2009.

The Petitioner sought out the care of his family physician Dr. El-Khatib in February 2009. The Petitioner's Exhibit 3, the records from Troy Family Health Center, Dr. Khatib show the Petitioner between October 2005 and February 2008 made generalized complaints of pain in his feet, hips, shoulder, hands and was given Celebrex for what the doctor diagnosed as osteoarthritis.

On February 23, 2009, the Petitioner complained to Dr. Khatib that his hands and feet are going numb. Primarily the Petitioner complained of foot pain over a year. Dr. Khatib did assess that the Petitioner may have right upper extremity carpal tunnel syndrome but it is uncertain whether this was relayed to the Petitioner. He did suggest nerve conduction studies.

On March 2, 2009, the Petitioner saw Dr. Khatib complaining of fatigue and numbness and felt better after using over the counter B12 and did advise Dr. Khatib that on the job he pulled and twisted his right upper extremity for 5-6 years. The Petitioner saw Dr. Khatib on April 13, 2009 advising that nerve conduction studies were scheduled for the following week and also advised that the vitamin B12 has helped his feet numbness but his arm was still going numb.

On March 27, 2009, the Petitioner saw Dr. Naseer to get the nerve conduction studies scheduled. He complained to Dr. Naseer of complains of feet and arm numbness, there is no mention of any associated work activity causing these symptoms. Nerve conduction studies performed on May 14, 2009 revealed moderate right carpal tunnel syndrome and ulnar neuropathy around the elbow.

Dr. Naseer referred the Petitioner to orthopedic surgeon Dr. Paul Scherer who first saw the Petitioner on June 11, 2009. The Arbitrator notes that when the Petitioner first saw Dr. Scherer the Petitioner advised that doctor that he was having problems with his right hand going to sleep for at least 1 ½ years he was laid off from the mill he wants to have this taken care while he still has insurance. Simply using a computer mouse causes his entire right hand goes to sleep. The Arbitrator notes that there is no mention by Petitioner of any work activities in this initial visit. Dr. Scherer's impression was that the Petitioner had right carpal tunnel syndrome moderate

and performed surgery on June 17, 2009.

On the first post operative visit on June 29, 2009 the Petitioner reported that he was no longer experiencing episodes of numbness in the right hand. The Petitioner's work history was discussed with the doctor and the Petitioner advised Dr. Scherer that he had been banding coils for 7 years using a heavy duty banding tool which requires a hard squeeze to crimp and cut the bands and this ends in a snap. The coils are hot when he was doing this and he has to do it quickly. Approximately 2 years ago when he went to the storeroom he had been doing a lot of lifting and carrying and his hand numbness has persisted since that time.

It was the Petitioner's testimony that Dr. Scherer initiated the conversation about his work activity.

Dr. Scherer has opined that it is very likely that the job duties of the Petitioner of banding coils repeatedly and using the hand coil banding tools for 7 years substantially contributed to or caused his carpal tunnel syndrome. He further opined that the Petitioner has had persistent numbness in his hands for several years and that when he started working in the storeroom and continued lifting and carrying that the numbness persisted. Scherer further opined that it is hard to say whether the carrying and lifting may have aggravated the carpal tunnel further or whether the carpal tunnel syndrome has merely persisted from prior years of hand use.

Dr. Scherer's records reveal that he had the Petitioner on light duty after surgery (6/17/09) and returned the Petitioner to work fully unrestricted on July 27, 2009. The Petitioner's light duty restrictions were that he was to do no repetitive use of the right hand and no lifting pushing and pulling in excess of 2-5 pounds. The Petitioner further testified that he last saw Dr. Scherer on August 10, 2009 and has not seen a doctor for his right carpal tunnel syndrome since that date. He currently states that his hand is doing well and that he has no pain, numbness, or tingling, however he does notice a deficit in his grip strength.

The Petitioner testified that the first time he realized that his work activities were causing his right hand symptoms and the diagnosis of his carpal tunnel was when Dr. Scherer discussed this with him on June 29, 2009. The Petitioner testified that he was not aware of what carpal tunnel was while he was working for the Respondent.

The Respondent had the Petitioner examined by Dr. Mitchell Rotman who took a history from the Petitioner, the history consisted of the Petitioner's stating that he feels his carpal tunnel on the right side was due to banding coils. The Petitioner testified that he thought he was having circulation problems when he was doing that job, stating that he ignored it and then his hand went numb all the time and woke him up at night. He banded for about 7 years and then for the last 2-3 years he was transferred to the storeroom. There is no history of diabetes but he does have a history of B12 deficiency. His B12 shots did help his leg numbness and tingling. The Petitioner has described in detail the banding process and Dr. Rotman did review medical records and the video provided by the Respondent. Based upon a review of all this information Dr.

Rotman opined that the Petitioner was at MMI from his advanced carpal tunnel. Dr. Rotman could not attribute the Petitioner's carpal tunnel to the banding activity, in fact finding his carpal tunnel to be idiopathic. Dr. Rotman did not feel the carpal tunnel was aggravated by any work activities as well.

ACCIDENT AND NOTICE OF ACCIDENT

The Arbitrator concludes, based upon the evidence submitted and the Courts analysis set forth in the cases of Peoria County Belwood Nursing Home vs. Industrial Commission, 115 Ill. 2nd 524, 505 N.E. 2nd 1026, 106 Ill. Dec. 235 (1987), Three "D" Discount Store v. Industrial Commission, 198 Ill. App 3d 43, 556 NE 2d 261, 144 Ill. Dec. 794 (1989) as well as Durand v. Industrial Commission, 224 Ill. 2d 53, 862 N.E. 2d 918, 308 Ill. Dec. 715 (2006) that the Petitioner sustained an accidental injury on June 29, 2009, the date that Dr. Scherer inquired of Petitioner what his specific work duties were. The Petitioner testified that was the first time he was aware that his repetitive work activities were causing his right hand symptoms caused by the carpal tunnel syndrome. The Petitioner testified that while working for the Respondent he was unaware as well what carpal tunnel syndrome was and did not make the connection between his work activities and his hand complaints.

The arbitrator also concludes that Notice of Accident was properly given by the Petitioner to the Respondent as his Application for Adjustment of Claim was filed on August 3, 2009, 36 days after June 29, 2009.

ACCIDENT AND CAUSAL CONNECTION

The Petitioner testified that prior to working as a hot strip bander he had no symptoms referable to his right wrist or hand. The medical records from Dr. Scherer reveal Petitioner is not diabetic. The Petitioner's job description (Exhibit 7), his testimony concerning his job duties as a bander and while in the storeroom, along with the Respondent's video demonstrating the bander's job (albeit at a slower pace) clearly provide evidence that the Petitioner's work was hand and wrist repetitive in nature.

Petitioner testified that he was required to use his right hand to grip the banding gun and twist the gun to the left and right to hook onto the band. He was also required to use his right hand to move the gun up and down to gain access to the band. The Petitioner testified the banding gun vibrates when operated and that the gun would kick as it crimps and cuts. The gun would also "kickback" into Petitioner's palm when it cut. This was all done as Petitioner was forcefully gripping the gun. By Petitioner's estimation as well as Respondent's witness Peek the Petitioner would band 100 to 135 coils per shift which would consist of 4 hours of work or 25-34 bands per hour. This would further break down to a coil being band every 1.75 minutes to 2.4 minutes. When Petitioner worked a double shift, then he would band on on average 200-270 coils per day.

Petitioner testified his right hand and wrist symptoms first appeared while performing the banding duties and did not abate when he stopped banding and went to the storeroom, where his symptoms continued when delivering throughout the plant.

Petitioner's treating physician has testified that the job duties of the Petitioner, banding coils repeatedly and using hand coil banding tools for 7 years, substantially contributed to or caused his carpal tunnel syndrome.

The Arbitrator therefore concludes that the Petitioner sustained an accident arising out of and in the course of his employment with the Respondent and further finds the Petitioner's carpal tunnel syndrome causally related to his work accident when banding coils. In doing so, the Arbitrator finds more credible Dr. Scherer's opinion than Dr. Rotman as the video does not correctly or accurately depict the speed of Petitioner's work duties.

T.T.D, MEDICAL BILLS, P.P.D.

Having found for Petitioner on the issues of Notice, Accident and Causal Connection, the Arbitrator awards the Petitioner T.T.D. benefits from 6/17/09 to 7/27/09, the undisputed time period for which Petitioner was taken off work by Dr. Scherer.

The Arbitrator further orders the Respondent to pay Petitioner's medical bills incurred as a result and related to his carpal tunnel syndrome condition per the medical fee schedule.

The Arbitrator lastly orders Respondent to pay to Petitioner 12.5% loss of the right hand at the rate of \$664.75 per week for 25.625 weeks as a result of the carpal tunnel syndrome and based upon the Petitioner's testimony.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Edward Lee", written in a cursive style.

Arbitrator Edward Lee

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Griffin,

Petitioner,

14IWCC0062

vs.

NO: 11 WC 40321

Caterpillar, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the nature and extent of Petitioner's disability, statutory interpretation (section 8.1(b)), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$13,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JAN 31 2014

DLG/gal
O: 1/23/14
45



David L. Gore



Mario Basurto



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GRIFFIN, ROBERT

Employee/Petitioner

Case# **11WC040321**

CATERPILLAR INC

Employer/Respondent

14IWCC0062

On 3/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
PHILIP A BARECK
77 W WASHINGTON 20TH FL
CHICAGO, IL 60602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

STATE OF ILLINOIS)

)SS.

COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

141WCC0062

Robert Griffin

Employee/Petitioner

v.

Caterpillar, Inc.

Employer/Respondent

Case # 11 WC 40321

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Springfield**, on **December 12, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute? ☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **September 30, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$46,000.52**; the average weekly wage was **\$884.63**.

On the date of accident, Petitioner was **62** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$2,106.36** for TTD, **\$1,257.88** for TPD, \$- for maintenance, and \$- for other benefits, for a total credit of **\$3,364.24**. The parties stipulated the correct TTD and TPD was paid.

Respondent is entitled to a credit of \$- under Section 8(j) of the Act.


ORDER

Permanent Partial Disability: Schedule injury


Respondent shall pay Petitioner permanent partial disability benefits of \$530.78/week for 32.25 weeks, because the injuries sustained caused the 15 % loss of use of the Petitioner's left leg, as provided in Section 8(e)12 of the Act. In support of the Arbitrator's determination, please refer to Appendix "A" attached. Respondent shall pay Petitioner compensation that has accrued from September 30, 2011 through December 12, 2012, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

APPENDIX "A"

In regards to "F" – "Is Petitioner's current condition of ill-being causally related to the injury?" and "L" – "What is the nature and extent of the injury?", the Arbitrator finds the following:

FINDINGS OF FACT

Petitioner was 62 years of age at the time of the accident on September 30, 2011. He was married and had no dependent children. On September 30, 2011 Petitioner testified that he was carrying a ladder, weighing approximately 50 pounds, positioning the ladder and felt a "pop" in his left knee. (T.15).

At the time of the accident, Petitioner testified he was a machinist and had worked for Respondent as a machinist since he was hired in 2004. As a machinist, Petitioner testified that he worked in a large cell on machine parts and sent them on to assembly. (T.9). In performing his job duties, he would spend eight hours a day on his feet and was required to perform kneeling, squatting and twisting at his knees periodically throughout the work day. (T.10). Petitioner also testified that he would use step ladders throughout the work day and would utilize ladders 15 to 25% of the work day while working on certain machines. (T.11, T.12). Petitioner would classify his machinist's duties as physical with reference to his knees.

After the accident, Petitioner testified he notified his supervisor and was carted to Caterpillar Medical. (T.16). According to the Caterpillar medical records, the Respondent provided Petitioner with a knee sleeve which Petitioner testified he began wearing. (T.17, T.18, Px1, Rx1).

On October 5, 2011, Petitioner testified he began treatment with Dr. Kefalas. (T.18). Dr. Kefalas noted that Petitioner presented with an "acute left knee injury which occurred on 09-30-11 at work." (Px2, Rx2). The doctor noted the Petitioner felt a "pop" in his left knee while he was positioning a ladder. (Px2, Rx2). He was prescribed restrictions, provided light duty work, and recommended for an MRI which was performed. (T.19).

On October 6, 2011, the MRI revealed a partial tear of the ACL, Grade I MCL injury as well as medial meniscal tear with meniscus extrusion, joint effusion and synovial changes. (Px2, Rx2). On October 18, 2011, Caterpillar's physician, Dr. Fabrique, indicated that Petitioner's left knee injury was "occupational" and Petitioner was prescribed restrictions. (Px1, Rx1).

As a result of his knee restrictions, he was transferred to the tool room which dropped his classification from a Class V to a Class II and decreased his hourly pay rate from \$22.40 to \$14.97. From October 24, 2011 through December 14, 2011, Petitioner received TPD from Respondent. (T.21). He also underwent physical therapy.

On December 15, 2011, Petitioner underwent left knee surgery performed by Dr. Kefalas. According to the operative report, there was a "radial tear" in the medial meniscus and a partial medial meniscectomy was performed. (Px2, Rx2). The operative report also noted Grade III chondral lesions on the weight-bearing surface of the medial femoral condyle which were smoothed with a shaver. (Px2, Rx2).

Petitioner continued to treat with Dr. Kefalas through March, 2012. (T.23).

On May 11, 2012, Respondent sent Petitioner to Dr. Ethiraj for an independent medical evaluation and impairment rating. (Rx3). Dr. Ethiraj testified for Respondent in an evidence deposition. Dr. Ethiraj agreed that the Petitioner's accident on September 30, 2011 could be the cause of the Petitioner's left knee injury based upon a reasonable degree of medical certainty. (Rx.3 @ Page 42, 43)

CONCLUSIONS OF LAW

In regards to "F" - "Is Petitioner's current condition of ill-being causally related to the injury?"

The Arbitrator finds that the Petitioner's left knee condition of ill-being is causally related to the injury and relies upon the Respondent's in-plant physician Dr. Fabrique, noting "occupational," Dr. Ethiraj's opinion, as well as the treating records from Dr. Kefalas, which document the accident.

In regards to "L" - "What is the nature and extent of the injury?"

The injuries to Petitioner's left leg include a radial tear of the medical meniscus and chondral lesions which required surgery. For accidental injuries occurring on or after September 1, 2011, Section 8.1b of the Act lists the following criteria to be weighed in determining the level of permanent partial disability:

- 1) **The reported level of impairment** - A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
- 2) **The occupation of the injured employee;**
- 3) **The age of the employee at the time of the injury;**
- 4) **The employee's future earning capacity; and**
- 5) **Evidence of disability corroborated by the treating medical records.**

No single enumerated factor shall be the sole determinant of disability.

1. In regards to the level of impairment:

Dr. Ethiraj, Respondent's physician, opined Petitioner sustained a 2% left lower extremity/leg impairment and 1% whole person impairment pursuant to the most current AMA Guides. The Arbitrator notes that the impairment does not equate to permanent partial disability under the Illinois Workers' Compensation Act. Dr. Ethiraj acknowledged in his deposition that his "impairment (rating) is not directly correlated to disability because there were many other factors that would lead to disability." (Rx3 @ Page 37). Dr. Ethiraj found no atrophy or loss of motion in the knee but noted mild tenderness to palpation around the medial joint line. (Rx3 @ Pages 26, 27, 55). The doctor admitted that he could have used the operative report as a grade modifier to increase the impairment rating, but used the MRI which revealed an MCL sprain and not the actual surgical report that revealed the medial meniscus tear. (Rx3, Pages 56, 57, 58, 59). The doctor acknowledged that the AMA Sixth Edition clearly states that the doctor should use the most significant injury in the diagnosis for the impairment rating but the doctor instead used the MRI which revealed an MCL sprain. (Rx3 @ Page 62). The doctor acknowledged that when a patient undergoes a meniscus surgery, "they are at more risks to develop arthritis". (Rx3 @ Page 48). Dr. Ethiraj also testified that Petitioner continues to perform his home exercise program. (Rx3 @ Page 51).

2. In regards to occupation:

Petitioner's occupation is machinist/factory worker. Prior to working at Caterpillar, Petitioner testified he worked in general construction as a scheduler, Mitsubishi Motor Manufacturing Company as a supervisor and although he did some office work, he basically is a "blue collar physical" worker. (T. 14, 15). The Arbitrator notes that the Petitioner's permanent partial disability is greater based on the fact that his occupation and past occupations required physical, strenuous labor, with significant leg/knee activities.

3. In regards to age:

Petitioner at the time of the injury was 62 years of age. The Arbitrator acknowledges the Petitioner's age and the limitations and residual that come with this type of injury as a result of his age.

4. In regards to future earning capacity:

Petitioner's future earning capacity has been limited as a result of the injury. After the surgery, Petitioner returned to work but testified that he chose not to transfer or bid to more physically demanding, higher paying jobs in the plant because of the knee injury. Also, after he returned to work, Petitioner testified that he did not work a lot of voluntary overtime because his left knee continued to bother him and at that time he was taking pain medication two to four times per day. (T. 24). Petitioner testified that after he returned to work for approximately four months, following his surgery, he was terminated and has been looking for work unsuccessfully since and recently began

drawing his Social Security early retirement at a reduced rate. (T. 27, 29). Petitioner testified that he has decided not to apply for employment in factories or foundries performing the kind of work he previously performed in his occupation, "because there's just too much walking and bending." (T. 28). Petitioner testified that he continues to look for part-time or full-time work and the jobs are in the range of \$10.00 to \$15.00 per hour, significantly less than how much he was making at the time of the injury. The Arbitrator concludes that this injury has negatively impacted on the Petitioner's future earning capacity.

5. In regards to evidence of disability corroborated in the treating records:

Petitioner has demonstrated evidence of disability. Petitioner credibly testified that he currently experiences pain, stiffness, swelling and locking in his left knee. Petitioner's complaints regarding his left leg are corroborated in the treating medical records of Dr. Kefalas as well as the Caterpillar Plant medical records. (Px1, Px2, Rx1, Rx2). Dr. Kefalas' treating records demonstrated a loss of motion that required surgery and improvement following surgery. (Px2, Rx2). On January 18, 2012, Dr. Kefalas noted that his knee condition had stabilized and released him from his care. (Px2, Rx2). Dr. Kefalas encouraged him to continue using the patella femoral brace whenever he was active and to return if there were any "further problems or concerns". (Px2, Rx2). Petitioner's complaints, supported by the treating medical records, evidences a disability as indicated by the Commission decisions regarded as precedent pursuant to Section 8(e).

The determination of permanent partial disability ("PPD") is an evaluation of all five factors as stated in the Act. In making this determination of PPD, no single enumerated factor is deemed the sole determinant. Rather, the Arbitrator, after weighing all five factors, notes that his advanced age, physical occupation, credible complaints, loss of earning capacity, all support a permanent partial disability award of 15% loss of use of his left leg. The Arbitrator specifically acknowledges the 2% impairment rating and included this rating in his analysis. However, Dr. Ethiraj admitted that the rating could have been computed in a different manner to obtain a higher percentage and the Arbitrator concludes that impairment does not equate to disability in this case. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b, Petitioner has sustained an accidental injury that resulted in a 15% permanent partial disability/loss of use to his left leg. The Arbitrator further finds the Respondent shall pay the Petitioner the sum of \$530.78 a week for a further period of 32.25 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
 COUNTY OF LA SALLE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michelle Narczewski,

Petitioner,

14IWCC0063

vs.

NO: 12 WC 27591

Manor Court of Peru, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical expenses, causal connection, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0063

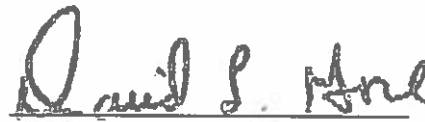
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$3,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 31 2014

DLG/gal
O: 1/23/14
45



David L. Gore



Mario Basurto



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0063

Case# 12WC027591

NARCZEWSKI, MICHELLE

Employee/Petitioner

MANOR COURT OF PERU LLC

Employer/Respondent

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1097 SCHWEICKERT & GANASSIN LLP
SCOTT J GANASSIN ESQ
2101 MARQUETTE RD
PERU, IL 61354

1337 KNELL & KELLY LLC
CHARLES D KNELL
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSalle)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION
19(b)

14IWCC0063

Michelle Narczewski,
Employee/Petitioner

Case # 12 WC 27591

v.

Consolidated cases: n/a

Manor Court of Peru, LLC,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **Ottawa**, on **June 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWC0063

FINDINGS

On the date of accident, **October 6, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$23,920.00**; the average weekly wage was **\$460.00**.

On the date of accident, Petitioner was **38** years of age, *married* with **2** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$231.00 to Dr. Klopfenstein, \$2,208.00 to Dr. Kube, \$827.00 to IVCH and \$68.50 to St. Margaret's Hospital, as provided in Sections 8(a) and 8.2 of the Act.


Respondent shall pay to Petitioner penalties of \$0, as provided in Section 16 of the Act; \$0, as provided in Section 19(k) of the Act; and \$0, as provided in Section 19(l) of the Act.

Pursuant to Section 8(a), the Respondent shall provide the Petitioner the care recommended by Dr. Kube including a cervical surgery at C6-7 that provides for a disc excision, decompression and disc replacement along with ancillary care required to complete these procedures and the care that is necessary following her surgery.

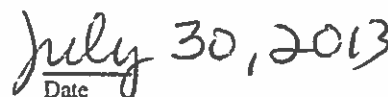
In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

AUG 7 - 2013

FINDING OF FACT

Michelle Narczewski f/k/a Michelle Ristau was an employee of the Respondent, Manor Court of Peru, LLC on October 6, 2011. At that time, she was employed as a certified nurse assistant ("CNA") and had been for the last two years.

As a CNA for the Respondent, Ms. Narczewski assisted people in and out of wheelchairs for transport to and from the bathroom, dining area and other parts of the nursing home. She also helped residents with bathing tasks and answered call lights. On October 6, 2011, one of the residents was a man weighing 350 to 400 pounds who had just undergone knee surgery. He had to be moved from his wheelchair to the bed as he was unable to stand on his own. The devices typically used to assist the Petitioner in transferring a patient from the wheelchair to the bed, such as a Hoyer Lift, were unavailable for use due to his size and weight.

Due to concerns about how to move the patient, up to ten staff members met in the resident's room to discuss how he could be safely transferred. It was agreed two to three aids would assist in lifting the patient while four to five others, one of them being the head nurse, would also lift and turn the patient to help place him in bed. The group began to move the patient when he suddenly began to drop and fall toward the bed. During this fall, the patient landed on the Petitioner's left upper body.

After the Petitioner was able to manipulate herself out from underneath the patient, Ms. Narczewski states she was in shock for the first few moments after the accident and then made her way into the hallway. The remaining staff completed the transfer. While in the hallway, Ms. Narczewski experienced pain in the left arm and shoulder. She also experienced pain at the base of her neck where it meets the shoulder.

She was asked by Gerry McKay, the head nurse, Don Summers, a supervisor, and Angie Taylor, the human resource director, what happened and how she was doing.

An employee report of injury form was completed and indicated the Petitioner experienced pain in the left shoulder and bicep area. Rx 12. The Petitioner indicates the pain drawing on this form includes the base of her left neck through the shoulder and into the bicep. Id.

Ms. Narczewski continued to work the remainder of her shift and worked the next day with the help of co-employees. Because of increasing pain, the Respondent sent her to the Occupational Health Department at St. Margaret's Hospital on October 10, 2011. Px 5. She was seen by Dr. Koogler who wrote a heavy patient fell onto the Petitioner's left shoulder on October 6, 2011. Id. Her pain has not improved since the accident and is presently at a nine out of ten. Id. No prior injuries or problems with the left shoulder area are reported. Id. Dr. Koogler noted tenderness on palpation around the left acromion and anterior glenohumeral joint areas. Id. Tenderness of the left shoulder trapezius muscle was also reported. Id. There was decreased range of motion of the left shoulder at 40 degrees of forward flexion and 40% of abduction increased pain. Id. Neer's and Hawkin's Testing was positive. Id. A mild positive impingement sign was also recorded. Id. The Petitioner testified at this visit that she was experiencing pain which began at the base of her neck and ran through her left shoulder, into the upper portion of her arm. Following this examination, a Medrol Dose Pack and Naprosyn were prescribed. Id. A work restriction of 20 pounds with minimum use of the left arm and no over the shoulder work was ordered. Id.

At her October 17, 2011 follow up appointment with Dr. Koogler, the Petitioner

had continued complaints of pain around the left scapula area and down the back of the left arm. Id. Pain in the acromion had improved. Id. She remained tender in the left scapula area extending to the posterior glenohumeral joint and over the triceps muscle area. Id. Ms. Narczewski was told to continue use of her sling. Id. A prescription for physical therapy was provided for left shoulder and arm strengthening. Id.

Ms. Narczewski returned to Dr. Koogler on October 31, 2011. Id. He reported she experienced sharp impingement pains to the left anterior and lateral shoulder area. Id. He wrote her shoulder pain has improved and physical therapy is still pending. Id. She is working on light duty and does not require regular use of medication. Id. Dr. Koogler indicated the neck is not tender and that there is minimal discomfort around the posterior left scapula. Id. Neer and Hawkin's Tests remain positive. Id. With his assessment of left shoulder pain and mild impingement signs, he provided a Medrol Dose Pack. Id. Physical therapy was again ordered and light duty restrictions provided. Id.

At a follow up appointment of November 14, 2011, Dr. Koogler stated the Petitioner had been doing well in physical therapy and experienced no pain in her left shoulder in the last week. Id. It was not tender to palpation and had a full range of motion without aggravating her pain. Id. Neer and Hawkin's Tests were now negative without impingement signs. Id. He wrote the Petitioner is to complete her physical therapy and continue her home exercises. Id. He permitted Ms. Narczewski to return to full duty. Id.

After she completed physical therapy, the Petitioner explained she had continuing complaints of pain from the base of her neck through the left shoulder and upper arm. However, the Petitioner hoped she could continue to work and improve. Ms. Narczewski

testified that at work she struggled to perform her daily tasks over the next several months. By May 3, 2012, her pain intensified to the point she reported to the Illinois Valley Community Hospital emergency room complaining of pain in her neck and left shoulder. Px 3.

At the Illinois Valley Community Hospital emergency room, their notes indicate the Petitioner was injured about eight months ago when moving a heavy patient. Px 3. Her left shoulder is tender to touch and over the last week she has been experiencing increased pain. Id. Dr. Ghidorzi indicates she has pain everywhere in her left shoulder area with limited range of motion in all planes. Id. He considered a number of differential diagnoses that included a rotator cuff tear, sprain/strain, tendonitis or bursitis as well as a contusion or abrasion. Id. He prescribed her off of work for the day and prescribed minimum work using the left arm. Id.

After her visit to the Illinois Valley Community Hospital, she reported to her employer with their prescribed restrictions. Upon receipt, her supervisor sent her to the Occupational Health Department of St. Margaret's Hospital. Px 8. Their records demonstrate the Petitioner had complaints of left shoulder pain. Id. She had earlier gone to the emergency room at the Illinois Valley Community Hospital. Id. To clarify her work restrictions, she was required by her employer to report to St. Margaret's for a follow up. Id.

At St. Margaret's Occupational Health Department, they report the Petitioner's left shoulder was previously injured in 2011 and the shoulder pain resolved but returned by mid March. Id. There was no additional injury reported but it was felt the routine work she performed required a lot of resident lifting and moving which caused a reoccurrence

of her pain with this work activity. Id. The soreness in the shoulder progressed over the last six weeks with pain occurring with movement of the limb. Id. Dr. Koogler wrote the pain is worse between the neck and left shoulder and extends through the shoulder into the upper arm. Id. Objectively, Dr. Koogler noted the Petitioner had a good range of motion within the neck but movement aggravated pain from the base of the neck to the left shoulder and arm. Id. A positive Spurling's Compression Test with a sharp increase of pain was reported. Id. There was tenderness over the upper trapezius muscles. Id. Left shoulder movement does not significantly aggravate her pain. Id. There is minimal discomfort on palpation with significant aggravation of pain with the Neer's, Hawkin's and O'Brien's Testing. Id.

After his examination, Dr. Koogler diagnosed her condition as cervical radicular pain extending to the left shoulder. Id. He also provided an additional diagnosis of left shoulder pain. Id. Naprosyn and Tramadol were prescribed along with a cervical MRI to evaluate the upper back and left shoulder. Id. He reported the Petitioner is to remain off for the remainder of the day but could return to work with the restrictions of ten pounds maximum lifting, minimum bending or stooping, minimal work involving the left arm and no over the shoulder work. Id. The Petitioner was also to avoid extreme neck movement. Id.

At the request of Dr. Koogler, Ms. Narczewski returned after her MRI of May 11, 2012. Id. This MRI of the cervical spine provided a history that the 38 year old Petitioner had cervical radicular pain involving the left shoulder. Px 7. The test demonstrated a moderate central and slightly left paracentral disc herniation at C6-7 with a slight caudal extrusion of the herniated disc. Id. There is a moderate degree of central stenosis without

cord impingement. Id. The radiologist, Dr. Yousuf, noted that clinically, this finding may produce C7 radiculopathy. Id.

At the Petitioner's May 16, 2012 visit, Dr. Koogler reviewed the MRI and indicated she had cervical radicular pain on the left side through the shoulder to the left upper arm. Id. Tilting her head, working on a computer, or other extreme neck movements aggravates her pain. Id. She continues to have good range of motion in her neck but motion does increase shoulder pain. Id. A Spurling's Compression Test aggravates her pain. Id. Dr. Koogler provided a diagnosis of a C6-7 disc herniation and C6-7 radiculopathy with the left shoulder pain being likely from the radiculopathy itself. Id. He next provided a referral to a neurosurgeon and ordered continued light duty work for her. She was later seen by Dr. Klopfenstein.

The records of Dr. Klopfenstein with the Illinois Neurological Institute demonstrate he initially received a referral from Dr. Koogler, the Respondent's occupational health physician. Px 7. The diagnosis on the initial referral to the Institute was a C6-7 disc herniation with radiculopathy. Id. Records were forwarded to Dr. Klopfenstein and were reviewed by him on May 30, 2012. Id. His impression was a cervical disc herniation at C6-7. Id. Following this review, he suggested continued physical therapy with the addition of traction and a referral to a pain clinic for epidural steroid injections. Id. If the symptoms persisted after therapy, she was to come in for an appointment in six to eight weeks. Id. As her symptoms did persist, she was seen by Dr. Klopfenstein on July 26, 2012. Id.

At this appointment, Dr. Klopfenstein reported Ms. Narczewski had a several month history of neck and left upper extremity pain after a patient fell on her at work. Id.

He explained her pain is in the left paraspinal musculature and radiates into the intrascapular region as well as into the left shoulder and down the upper extremity into her digits. Id. The MRI demonstrates a C6-7 disc herniation. Id. Physical therapy has provided little relief and traction seems to have increased her symptoms. Id.

Dr. Klopfenstein's examination revealed some break away weakness of the left triceps with possible grip weakness in the left upper extremity but otherwise her motor function was a five out of five. Id. Her Tinel's is marginally positive at the medial epicondyle. Id. Dr. Klopfenstein noted some of her complaints related to her C6 disc herniation while others did not. Id. He suspected multiple issues including the disc herniation as well as myofascial pain and potential peripheral nerve entrapment. Id. He next ordered epidural steroid injections and stated he wanted to see her back for an additional appointment. Id. If she remained symptomatic, surgery versus additional work up would occur. Id.

The injections recommended by Dr. Klopfenstein did occur on August 1, 2012 and August 10, 2012. Id. Neither provided the relief hoped for per Ms. Narczewski. After the failure of the injections, the Petitioner next saw Dr. Kube on a referral from Dr. Orteza. Px 4. Dr. Kube is an orthopedic spine surgeon located in Peoria, Illinois.

The Petitioner's first visit with Dr. Kube occurred on September 4, 2012. Id. At that time, Dr. Kube wrote Michelle Narczewski was being seen for an October 2011 accident in which pain occurred after a lifting maneuver of a patient weighing approximately 365 pounds. Id. At that time, the patient fell upon the Petitioner's left side. Id. She had fairly immediate significant pain in the shoulder girdle on the left side and in the neck. Id. She now also has headaches and tried physical therapy which provided no

relief. Id. She reports that Dr. Klopfenstein originally told her she would require surgery but then became upset after he suggested additional epidural steroid injections. Id. The patient suggested she was frustrated because Dr. Klopfenstein did not appear to be listening to her complaints. Id.

Dr. Kube performed an examination which revealed left upper back, forearm, shoulder, upper arm, hand and finger pain. Id. He wrote moving her neck worsens her symptoms in the left forearm, upper arm, hand and fingers. Id. Left side numbness is present and she expresses difficulty picking up small objects with her left hand. Id. Prior treatments include physical therapy, exercise, traction, anti-inflammatories and epidural steroid injections. Id.

Dr. Kube reviewed the MRI which demonstrated a C6-7 large herniation and caused impingement. Id. The herniation is consistent with the region of the patient's paresthesia and pain. Id. He determined Ms. Narczewski suffered from displacement of her cervical and intervertebral disc with myelopathy, brachial neuritis, cervical spinal stenosis, cervicgia as well as sprains in the back of the neck. Id. Dr. Kube wrote the cervical disc herniation was likely caused by the lifting maneuver and the fall that occurred. Id. He felt the shoulder pain she experienced was related to the cervical spine and was radiating in nature. Id. Dr. Kube reported her cervical disc and radiculopathy was caused by her accident. Id.

Based upon his examination and given the failure of epidurals and rehabilitation, Dr. Kube explained it was appropriate to perform a disc decompression and replacement at C6-7. Id. A disc replacement versus fusion was discussed with the patient. Id. Given the problems exist at a single level and there is an absence of any significant disc

degeneration, Dr. Kube noted the reported data suggests disc replacement is superior to fusion and provides a faster recovery. Id.

Ms. Narczewski was next seen by Dr. Kube on November 1, 2012. At this visit, she reported continued radiculopathy in the cervical spine. Id. There is a positive Spurling's Sign and she still has an obvious disc herniation at C6-7. Id. His assessment from the prior visit was essentially the same, spinal stenosis, sprain/strain, brachial neuritis, cervicalgia and the requirement of a disc replacement due to her cervical intervertebral disc syndrome which was occurring without myelopathy. Id. Dr. Kube repeated his request of a cervical disc replacement. Id. He further indicated he has reviewed the records and noted there was a little gap of treatment. Id. In that gap of treatment, he states the Petitioner reports she was having neck pain that went down the shoulder girdle region including the clavicle and bothered her since the original injury. Id. She rehabbed and did try to return to work. Id.

Dr. Kube was critical of her prior care and reports the initial imaging done clearly demonstrates a cervical disc herniation. Id. Dr. Kube relates his care and need for surgery to her work injury that occurred while moving a patient. Id. He indicates a disc excision and decompression disc replacement was felt to be appropriate. Id. He placed her on light duty restrictions which remain through the present. Id.

Dr. Kube met with the Petitioner again on May 23, 2013. Id. His findings and recommendations remain the same. Id. His request for surgery is unchanged. Id. While surgery is pending, the Petitioner indicates she remains on light duty. The Petitioner reports the Respondent is following the restrictions provided by Dr. Kube.

The Respondent in this matter obtained the services of Dr. Morris Marc Soriano.

Rx 11. On November 1, 2012, Dr. Soriano performed a medical evaluation. He reported her current diagnosis is that of a resolved shoulder strain secondary to her October 6, 2011 injury. Id. He claims her diagnosed disc herniation does not bear a relationship to her October injury. Id. Dr. Soriano instead claims the Petitioner's condition is consistent with symptom exaggeration, functional illness and nonorganic illness. Id. He indicated she has positive Waddell Signs which support this finding. Id. He recommends no further treatment and felt the Petitioner was capable of full duty employment. Id.

The Respondent also presented a photograph of the Petitioner and the husband of a co-employee, Mary Holt. Rx 13. The Petitioner testified this photograph was taken of her standing behind the sled occupied by Mr. Holt. She explained Mr. Holt was attempting to be funny and reached back as she stood behind him. He was trying to grab her ankles. She indicated she did not get on or use a sled at all that day and was only present for the company her friends provided.

The Petitioner presented a medical bills exhibit in this matter. Px 1. That exhibit demonstrates gross billings of \$9,646.04. Of this amount, \$4,035.25 has been paid by the Respondent, insurance discounts of \$2,276.29 have been paid and an additional \$3,334.50 is outstanding.

F. Is Petitioner's current condition of ill-being causally related to the injury; K. Is Petitioner entitled to any prospective medical care?

Following consideration of the testimony and evidence presented, this Arbitrator finds the Petitioner's current condition of ill-being is causally related to her work injury of October 6, 2011. Further, this Arbitrator finds the Petitioner is entitled to prospective medical care that is recommended by Dr. Richard Kube which includes a C6-7 disc excision, decompression and disc replacement along with all necessary ancillary care for these procedures to occur.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Following the Petitioner's work injury of October 6, 2011, the Respondent sent her to the St. Margaret's Hospital Occupational Health Department. Px 8. She followed the recommendations of Dr. Koogler that included the use of medication, obtaining physical therapy and performing work at light duty. Id. She then attempted to return to her normal job but after several months of effort, her pain increased and she was again seen by Dr. Koogler, the Respondent's occupational health physician. Id. This physician reported the continuation, as well as worsening of her pain and discomfort, had its origin with her October 6, 2011 accident. Id. He ordered a cervical MRI and then sent her for an additional opinion from Dr. Klopfenstein. Id.

Dr. Klopfenstein recommended the Petitioner obtain injections and physical therapy which she did. Px 4 & 6. This physician indicated that if the conservative care that has been provided failed, surgery may then be an option. Px 7.

The Petitioner next sought the care of Dr. Kube. Px 4. He obtained a history consistent with her injuries being related to her October 6, 2011 work injury. Id.

Following consideration of the testimony and evidence presented, this Arbitrator finds the medical services that were provided to the Petitioner were reasonable and necessary. The Respondent has not paid all appropriate charges for all reasonable and necessary services. These medical services shall now be paid by the Respondent and include the following unpaid balances: Dr. Klopfenstein, \$231.00; Dr. Kube, \$2,208.00; Illinois Valley Community Hospital, \$827.00 and St. Margaret's Hospital, \$68.50.

M. Should penalties or fees be imposed upon Respondent?

This Arbitrator has reviewed the testimony and evidence presented and finds the Respondent's behavior in this matter does not rise to a level that requires this Arbitrator to order the imposition of penalties. As such, these are denied.